

The California Environmental Quality Act ("CEQA"), Cal. Pub. Res. Code §§ 21000 et seq.)

The California Environmental Quality Act ("CEQA"), like the National Environmental Policy Act upon which it is based, is intended to ensure that environmental consequences of projects are fully considered by state and local governments. Under CEQA, any government entity approving a project, must evaluate the environmental impact of the project. In most instances, the governmental unit must evaluate the project through an Initial Study. CEQA applies to projects that have the potential for causing a significant effect on the environment, and is inapplicable only "[w]here it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment" (Cal. Admin. Code, tit. 14, § 15061(b)(3) (governing preliminary review).) Following preliminary review, CEQA requires that the agency "conduct an initial study to determine if the project may have a significant effect on the environment." (Cal. Admin. Code, tit. 14, § 15063(a) (emphasis added).) If there is "substantial evidence that any aspect of the project, either individually or cumulatively, may cause a significant effect on the environment," an EIR is required. (Cal. Admin. Code, tit. 14, § 15063(b).)

CEQA has broad coverage. The legislature enacted CEQA to, among other things, "[e]nsure that the long-term protection of the environment, consistent with the provision of a decent home and suitable living environment for every Californian, shall be the guiding criterion in public decision." (Cal. Pub. Res. Code § 21001(d).)

Accordingly, CEQA must be "interpreted in such a manner as to afford the fullest possible protection to the environment within the reasonable scope of the statutory language." (Cal. Admin. Code, tit. 14, § 15003(f).) At the "heart of CEQA" is the Environmental Impact Report ("EIR") requirement. (Cal. Admin. Code, tit. 14, § 15003(a).)

The purpose of the EIR is to "inform other governmental agencies and the public generally of the environmental impact of a proposed project" and to "demonstrate to an apprehensive citizenry that the agency has, in fact, analyzed and considered the ecological impacts of its decision." (Cal. Admin. Code, tit. 14, § 15003(c)-(d).)

An EIR Is Required Whenever a Fair Argument Can Be Made That the Project May Cause a Significant Adverse Environmental Effect. If there is substantial evidence in the record to support a "fair argument" that significant impacts or effects may occur from a proposed project, then an EIR must be prepared. (*Stanislaus Audubon Society, Inc. v. County of Stanislaus* (1995) 33 Cal.App.4th 144, 150.) "If there is substantial evidence of a significant environmental impact, evidence to the contrary does not dispense with the need for an EIR when it still can be 'fairly argued' that the project may have a significant impact." (*Id.* at 151 (internal quotation omitted).) The "fair argument" test creates a "low threshold requirement for initial preparation of an EIR and reflects a preference for resolving doubts in favor of environmental review when the question is whether any such review is warranted." (*Id.* at 151 (internal quotation omitted).) A negative declaration may be prepared only "if there is no substantial evidence that the project or any of its aspects may cause a significant effect on the environment." (Cal. Admin. Code, tit. 14, § 15063(b)(2).)

"A condition requiring compliance with environmental regulations is a common and reasonable mitigating measure." (*Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296, 308.) The project must comply with applicable laws and regulation to be legally built; however, if mere compliance with such existing laws and regulations were sufficient to prove that the project had no potential environmental impact, then an EIR would only be required for a project that did not comply – in other words, for an impermissible and illegal project. Rather, the lead agency must review the applicant's specific plans and independently determine whether or not the applicant's plans will lead to compliance. (*See id.* at 308-309.) To make this assessment, the lead agency must have "meaningful information reasonably justifying an expectation of compliance." (*Id.* at 308 (internal citation omitted).) Environmental compliance must be more than "likely"; it must be expected. (*See Azusa Land Reclamation Company v. Main San Gabriel Basin Watermaster* (2nd Dist. 1997) 52 Cal.App.4th 1165, 1204 (finding by lead agency that proposed mitigation measures "would likely" achieve compliance with governing water quality standards not sufficient).)

Scoping. Once an agency determines that it will issue an EIR for a project, it must define the scope of the discussion of environmental impacts. It can use an initial study; it must consult with other agencies that have responsibility for environmental resources related to the project; and it may seek early consultation with the public through public meetings and comments. (*See* Pub. Res. Code §§ 21080.1, 21080.3, 21080.4; 14 C.C.R. §§ 15143, 15082, 15083.)

Piecemealing and Tiering. A public agency may not divide a single project into smaller projects to avoid

responsibility for considering the impact of the project as a whole. (*Orinda Ass'n v. Board of Supervisors* (1986) 182 Cal.App.3d 1145, 1171). The definition of "project" is broad in order to maximize protection of the environment. (See *Bozung v. LAFCO* (1975) 13 C.3d 263, 283). An agency, however, may "tier" its environmental review. (See Pub. Res. Code §§ 21068.5, 21093, 21094; 14 C.C.R. § 15152. Site specific EIRs can incorporate (or tier from) previous general EIRs by reference. The more general EIR is appropriate for programs, plans, and policies; the narrow, site-specific EIR addresses more focused environmental impacts of a particular project related to the program, plan, or policy.

For specific requirements for EIRs, for negative declarations, and for some of the types of potential environmental impacts that trigger the need for an EIR, see Cal. Pub. Res. Code §§ 21000 et seq., 14 C.C.R. §§ 15000 et seq., numerous practice guides to CEQA, and the extensive case law.